

JAMES RANDALL KEMP §
v. § CIVIL ACTION NO. 6:09cv494
DIRECTOR, TDCJ-CID §

The Petitioner James Kemp, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his confinement. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Kemp says that he is serving a sentence of five to 99 years for murder, which sentence was assessed on October 18, 1979. He was re-incarcerated on June 23, 2006, as a parole violator, and complains that TDCJ officials “modified the trial court’s judgment” and “enlarged his sentence without affording him due process.”

The Magistrate Judge ordered the Respondent to answer the petition. The Respondent asserted that the petition is barred by the statute of limitations. Kemp filed a response to the answer saying that he had filed two state administrative resolution proceedings and a state habeas petition, and that the limitations period was tolled while these proceedings were pending.

After review of the pleadings and records, the Magistrate Judge issued a Report on April 12, 2010, recommending that the petition be dismissed. The Magistrate Judge concluded that the statute

of limitations had expired and that Kemp's claims lacked merit on their face. The Magistrate Judge also recommended that Kemp be denied a certificate of appealability *sua sponte*.

A copy of the Magistrate Judge's Report was sent to Kemp's last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has examined the pleadings and records in the cause as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly


ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner James Kemp is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this lawsuit are hereby DENIED.

SIGNED this 3rd day of June, 2010.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE